

1 MARY LOU ANDRADE  
2 Treasurer/Tax Collector/Public Administrator  
3 For the County of San Benito  
4 440 Fifth Street  
5 Courthouse, Room 107  
6 Hollister, CA 95023-3894  
7 (831) 636-4034 Tel  
8 (831) 636-4014 Fax



9 UNITED STATES BANKRUPTCY COURT  
10 SOUTHERN DISTRICT OF NEW YORK

11 In re: ) CASE NO. 12-12020 (MG)  
12 ) CHAPTER 11  
13 RESIDENTIAL CAPITAL, LLC, et al., )  
14 )  
15 ) OPPOSITION TO MOTION FOR ORDER  
16 ) AUTHORIZING SALE OF CERTAIN DEBTOR ASSETS  
17 ) FREE AND CLEAR OF LIENS, CLAIMS,  
18 ) ENCUMBRANCES, AND OTHER INTERESTS AND  
19 Debtors. ) GRANTING RELATED RELIEF  
20 )  
21 ) CREDITOR COUNTY OF SAN BENITO, CALIFORNIA

22 TO THE HONORABLE MARTIN GLENN AND TO ALL PARTIES OF INTEREST:

23 The COUNTY OF SAN BENITO, hereby submits its OPPOSITION TO MOTION FOR ORDER  
24 AUTHORIZING SALE OF REAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND  
25 OTHER INTERESTS, AND SUBJECT TO HIGHER OR BETTER OFFERS. The sale motion was filed by  
26 Residential Capital LLC and its debtor subsidiaries, as debtors in possession (collectively, the "Debtors" or the  
27 "Company").

28 SAN BENITO respectfully requests that this court accept this filing, if untimely, and waive any timeliness deficiencies.

SAN BENITO is a small county of 56,000 people. During the down turn of the economy San Benito has had to reduce staff in all departments including the Treasurer-Tax Collector-Public Administrator Offices. Addressing bankruptcy cases is the Treasurer-Tax Collector's sole responsibility without counsel assistance. It is imperative to know that police, fire, schools, and hospitals get their funding from property taxes. If we don't get our money, then we will not be able to fund these functions of local government. Additionally, the Treasurer-Tax Collector is solely responsible for the management of the three departments of local government with only four staff persons to execute the tremendous volume of duties. Consequently, certain obligations take priority at different times over others and we cannot be as timely as necessary, hence the request of SAN BENITO to waive any timeliness deficiencies.

1 SAN BENITO bases its Opposition on the following grounds;

- 2 1. SAN BENITO does not consent to the sale free and clear of liens because its secured personal property
- 3 taxes will not be paid directly upon the sale of the assets;
- 4 2. Non-bankruptcy law prohibits the sale free and clear of the liens;
- 5 3. The secured personal property taxes are a lien on the property;
- 6 4. This Bankruptcy Court must look at state law to determine the taxes;
- 7 5. Secured real and personal property taxes are mandated by state law.

8 SAN BENITO respectfully requests that this court allow its secured personal property taxes in the full

9 amount of \$4,557.94 for real personal property taxes.

10 SAN BENITO also requests that this court deny the Debtors' Motion for Sale of Assets Free and Clear of

11 Liens and order that SAN BENITO'S real personal property taxes be paid in full directly upon the sale of the assets.

12

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. PRELIMINARY STATEMENT**

15 The subject property is comprised of various locations within SAN BENITO County. The personal property

16 is subject to the assessment of local property taxes by SAN BENITO under California State law.

17 The personal property has been subject to secured real personal property taxes mandated under California

18 State law for the fiscal tax years of 2007-08, 2008-09, 2009-10, 2010-11, and 2011-2012.

19 **II. SAN BENITO OBJECTS TO SALE OF THE ASSETS FREE AND CLEAR OF LIENS**

20 The debtor may sell the property free and clear of any interest in such property of an entity other than the

21 estate only if the applicable non-bankruptcy law permits sale of such property free and clear of such interest, such

22 entity consents; such interest is a lien and the price at which such property is to be sold is greater than the aggregate

23 value of all liens on such property.

24 SAN BENITO objects to the sale because its liens on the real personal property will not be paid directly upon

25 the sale, in opposition to the dictates of California State law.

26 Additionally, non-bankruptcy law does not permit the sale of the property free and clear of liens as explained

27 below.

28 California Revenue and Taxation Code Section 2192.1 states:

Every tax declared in this chapter to be a lien on real property. . .have the priority over all other liens on the property, regardless of the time of their creation. Any tax. . .described in the preceding sentence shall be given priority over matters including but not limited to any recognizance, deed, judgment, debt, obligation, or responsibility with respect to which the subject real property may become charged or liable.

California Revenue and Taxation Code Section 2192.2 states:



1 Upon the sale . . . conducted under judicial process or otherwise by any sheriff, constable, trustee, receiver,  
2 or other ministerial officer, of any real property upon which ad valorem property taxes . . . are due and  
3 unpaid at the time of sale, the proceeds from that shall, after the payment of necessary and incidental sale  
4 expenses, be first applied to the amount of those ad valorem property taxes . . . and be transmitted by  
the conducting officer to the office responsible for the collection of those taxes and assessments. Emphasis  
added. The Treasurer-Tax collector is the governmental agency that collects taxes.

5 Since SAN BENITO does not consent to the sale and non-bankruptcy law prohibits the sale of real property  
6 and personal property without payment of the ad valorem taxes the assets cannot be sold without direct payment of  
SAN BENITO'S taxes.

7 **III. THIS COURT MUST LOOK AT CALIFORNIA STATE LAW WHEN APPLYING WHEN DETERMINING TAX**  
8 **LIABILITY**


9 It is well settled law that the bankruptcy court must apply California state law and California tax principles  
10 when determining the SAN BENITO tax liability.

11 **IV. CONCLUSION**

12 For all the foregoing reasons, SAN BENITO respectfully requests that this Court deny the Sale Motion and  
13 order that SAN BENITO'S real personal property taxes be paid in full directly upon the sale.

14 SAN BENITO would further request language in the order that directs payment of its tax liens directly from  
15 escrow and that SAN BENITO have the opportunity to review such language.

16 Dated: November 2, 2012.

17   
18 Mary Lou Andrade  
19 Treasurer/Tax Collector/Public Administrator  
20 For the County of San Benito, Secured Creditor  
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28

1 MARY LOU ANDRADE  
Treasurer/Tax Collector/Public Administrator  
2 For County of San Benito  
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4



5 **PROOF OF SERVICE BY MAIL**

6  
7 I, the undersigned, state that I am over the age of eighteen (18) years of age, not a  
party to this action, and I am employed in the county where the mailing took place. My  
8 business address is 440 Fifth Street, Room 107 (San Benito County Courthouse)  
Hollister, California 95023-3894. I served a copy of the following documents:

9 **Opposition to Motion for Order Authorizing Sale of Certain Debtor Assets**  
10 **Free and Clear of Liens, Claims, Encumbrances, and Other Interests**  
11 **and Granting Related Relief**

12 by enclosing them in an envelope and depositing the sealed envelope with the United  
States Postal Service with the postage fully prepaid. The envelope was addressed and  
13 mailed to each party listed below.

14 Morrison & Foerster LLP  
Gary S. Lee and Alexandra Barrage  
1290 Avenue of the Americas  
15 New York, NY 10104

16 Sidley Austin LLP  
Larry Nyhan and Jessica Boelter  
17 One South Dearborn  
Chicago, IL 60603  
18

19 Kirkland & Ellis LLP  
Ray Schrock, Richard Cieri and Stephen Hessler  
601 Lexington Avenue  
20 New York, NY 10022

Kramer Levin Naftalis & Frankel LLP  
Kenneth Eckstein and Douglas Mannal  
1177 Avenue of the Americas  
New York, NY 10036

Munger, Tolles & Olsen LLP  
Seth Goldman and Thomas Walper  
355 South Grand Ave.  
Los Angeles, CA 90071

Office of the United States Trustee  
Southern District of New York  
Brian Masumoto  
33 Whitehall Street, 21<sup>st</sup> Floor  
New York, NY 10004

21  
22 Date mailed: 11/05/2012  
23 Place of mailing: Hollister, California

24 I declare, under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.  
25

26  
27   
KATHERINE CASEY  
Deputy Treasurer  
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